



CUSTODY

A GUIDE TO CUSTODY IN THE FAMILY COURT

FAMILY COURT OF THE STATE OF DELAWARE

<http://courts.state.de.us/family>

Custody is a legal term used to describe the legal and practical relationship between a parent and his or her child.

The Delaware Law regarding custody can be found in the Delaware Code, Title 13, Chapter 7.

What is custody?

Custody is a legal term used to describe the legal and practical relationship between a parent and his or her child.

What are the types of custody?

Joint Custody: parents share the duties and responsibilities of raising the child. Each parent must care for, support, discipline and make decisions about the child's medical, educational, religious, health and social needs. Parents are expected to share information, discuss and decide together major issues regarding the child.

Sole Custody: an arrangement where the non-custodial parent does not actively share in the duties and responsibilities of raising the child.

-The non-custodial parent still has the right to request information concerning the child's progress in school, medical treatment, significant developments in the child's life, school activities and conferences, special religious events and other activities in which the parent may wish to participate. The non-custodial parent still has the right to reasonable access to the child by telephone and mail.

- *Sole custody is not a termination of the non-custodial parent's rights. For information on Termination of Parental Rights, please see the Termination of Parental Rights Instruction Packet.*

Who can petition for custody of a child?

The biological mother, biological father or adoptive parent of a child may petition for custody of the child. A stepparent may petition for custody only if they are married to the child's parent, their spouse has custody or placement of the child, their spouse died or became disabled while having custody of the child and the child was living with the stepparent and their spouse at the time the spouse died or became disabled.

What is placement?

Placement is the aspect of the Custody Order that involves where the child will live most of the time. The Custody Order will state whether the child should live primarily with one parent or live equally with both parents. If the Court determines the child should live mostly with one parent, that parent has *primary placement* of the child.

What is visitation?

Visitation is the means by which the parent who does not have primary placement spends time with the child. Visitation establishes a schedule of contact with the child. Generally when the Court addresses custody, it also addresses visitation. The Family Court Standard Visitation Guidelines provide a general idea of visitation arrangements. The Guidelines are located on the Family Court website.

How does the Court make a decision regarding custody of a child?

When making a decision about custody, placement and visitation, the Court will consider what is in the best interests of the child. The child's "best interest" is a legal standard comprised of 8 factors found in Title 13 of the Delaware Code Section 722. The 8 best interest factors are as follows:

- 1) The wishes of the child's parents as to his/her custody and living arrangements;
- 2) The wishes of the child as to his/her custody and living arrangements;
- 3) The interaction of the child with his/her parents, brothers and sisters, grandparents and any people living in the child's home or affecting the child's best interest;
- 4) The child's adjustment to his/her home, school and community;
- 5) The mental and physical health of all individuals involved;
- 6) How well each parent has in the past and currently satisfies their parental rights and responsibilities with respect to their children;
- 7) Evidence of domestic violence; and
- 8) The criminal history of any party or other resident of a household, including guilty pleas, pleas of no contest and criminal convictions.

Is a mediation conference required?

Yes. Unless there is an active no contact order between the parties, a previous finding of domestic violence, or one of the parties is a sex offender as defined by Delaware law, the parties will be required to attend a mediation conference. If the parties reach an agreement at the mediation conference, a consent order will likely be entered. If the parties are unable to reach an agreement at the mediation conference, a hearing before a Judge will be scheduled.

For more information on Custody, please see the Custody Instruction Packet, available in the Family Court Self-Help/Resource Centers and online at <https://courts.delaware.gov/family>.